Forms Corporation of America *and* Local 415-S Graphic Communications International Union, AFL–CIO. Cases 33–CA–9369 and 33–CA–9392

September 21, 1993

DECISION AND ORDER REMANDING

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On January 21, 1993, Administrative Law Judge Elbert D. Gadsen issued his decision in this proceeding. The Respondent filed exceptions and a supporting brief and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has determined that the judge failed to resolve credibility issues with respect to certain testimony that is relevant to the resolution of the Respondent's exceptions.

The judge found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee Steve Shelton on February 27, 1991.[1] The Respondent excepts, however, to the judge's rejection of its rebuttal argument that it discharged Shelton under its attendance policy because he had accumulated points beyond the number warranting discharge.

The evidence shows that the Respondent uniformly applied its attendance policy and was willing to make adjustments in accumulated points when there was a mistake or misunderstanding. The evidence also shows that prior to February 18, 1991, Shelton had accumulated three points pursuant to the Respondent's attendance policy. These points are not disputed.

The Respondent alleges that Shelton incurred two points on February 18 because he was absent without notice. Shelton testified that on February 18 he was sick and called in on the sick line as required. He testified further that employee Dan Breen answered and said that he would relay the message. The Respondent's witnesses, Human Resource Director Ellie McEwen, Supervisor James DiTusa, and Plant Manager William Barclay, all denied having been informed that Shelton had telephoned on February 18. The judge noted the conflict in testimony, the unexplained absence from the hearing of employee Breen, who was still employed by the Respondent, and the fact that neither DiTusa nor McEwen gave Shelton the benefit of the doubt. He failed, however, to determine whether or not Shelton had called in on the sick line on February 18 as he testified.

The Respondent alleged that Shelton incurred one point under the attendance policy on February 19 because he was absent with notice. The judge made credibility findings concerning the events on this day, and the one point is not disputed. Thereafter, until February 25 Shelton incurred no further points because he had a continuing illness and was under doctor's orders not to go back to work until February 25. There is no dispute about Shelton's record on these days.

Finally, the Respondent alleged that Shelton incurred two points each on February 25 and 26 for being absent without notice. This gave Shelton a total of 10 points. Since seven points warrant discharge under the attendance policy, the Respondent contends that it terminated Shelton for that reason. Shelton testified that he did not call in on February 25 and 26 because, in a telephone conversation with Plant Manager Barclay on February 21, Barclay told him that he need not call in until the morning of the day that he would be returning to work. Shelton called in on February 27 when he returned to work. Barclay denied giving Shelton these instructions. He testified that he did not call Shelton as Shelton had testified. Rather, according to Barclay, Shelton had called him on February 21 with the message that he would be home until Monday, February 25, pursuant to doctor's orders. The judge failed, however, to determine whether or not Barclay had instructed Shelton that he need only call in when he was returning to work, as Shelton had testified.

In light of the above, we shall remand this proceeding to the judge to prepare a supplemental decision containing specific findings of fact and credibiltity resolutions regarding Shelton's testimony concerning his alleged call on February 18 and his alleged conversation with Plant Manager Barclay on February 21. If appropriate, this supplemental decision shall contain revised conclusions of law and recommendations concerning Shelton's discharge.

ORDER

It is ordered that this proceeding is remanded to Administrative Law Judge Elbert D. Gadsen for the limited purpose of making specific findings of fact and credibility resolutions concerning the testimony of Steve Shelton and the Respondent's witnesses as to Shelton's alleged call on February 18 and his alleged conversation with Plant Manager Barclay on February 21 and, if appropriate, revised conclusions of law and recommendations concerning Shelton's discharge, which is alleged to have violated Section 8(a)(3) and (1).

[1] All dates are in 1991 unless otherwise specified.

IT IS FURTHER ORDERED that the judge shall prepare and serve on the parties a supplemental decision setting forth the resolution of such credibility issues, findings of fact, conclusions of law, and recommendations, including a recommended Order. Copies of the supplemental decision shall be served on all the parties after which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Will Vance, Esq., for the General Counsel.
John S. Schauer, Esq. (Seyfarth, Shaw, Fairweather & Geraldson), of Chicago, Illinois, for the Respondent.
Susan Brannigan, Esq. (Asher, Gittler, Greenfield, Cohen & D. Alba, Ltd.), of Chicago, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge. Unfair labor practice charges were filed on March 4 and 15, 1991, by Local 415-S Graphic Communications International Union, AFL–CIO (the Union or Charging Party) against Forms Corporation of America (the Respondent). Thereafter, on May 10, 1991, the Regional Director for Region 33 issued an order consolidating the cases and a consolidated complaint and notice of hearing.

In essence, the consolidated complaint alleges that Respondent interfered with, restrained, and coerced employees in the exercise of their Section 7 rights, by promising an employee benefits if he would withdraw his support for the Union and support the Company's position; that on another occasion, Respondent promised an employee it would give the employee more than the Union can give him if the employee would support the Company; that Respondent coercively interrogated an employee concerning how many ''yes votes'' he could change to ''no votes''; that Respondent promised to allow an employee to serve like a steward for the employees and present employee grievances to Respondent if the Union were defeated in an election; that a supervisor of Respondent told an employee he had passed up an opportunity for benefits by supporting the Union, and that Respondent wanted a certain union supporter employee out of the plant before the next union campaign; that Respondent told an employee it knew an employee who was still advocating unionism after the election; that the said employee had a bad attitude, and Respondent planned to get rid of employees who did not change their bad attitudes, thereby implying surveillance of employees protected union activities and threatening them with discharge if they did not abandon their activities; that Respondent observed more closely and restricted the movements in the plant of the known union supporter; and that Respondent interrogated an employee as to whether union activity was continuing, all in violation of Section 8(a)(1) of the Act.

The consolidated complaint further alleged that Respondent discriminatorily discharged an employee and refused to reinstate him; that Respondent discriminatorily transferred an employee from second to first work shift while it was fully aware that the transfer interfered with the employee's farming activities he carried on during the day; that Respondent issued a warning slip to the same employee for parking off the road near the plant; that Respondent harassed and yelled obscenities at the same employee and gave him a written warning for allegedly talking to a production employee without having a work order, all because the employees engaged in protected union activities, in violation of Section 8(a)(3) of the Act.

The Respondent filed an answer on May 22, 1991, denying that it has engaged in any unfair labor practices as set forth in the consolidated complaint.

The hearing in the above matter was held before me in Woodstock, Illinois, on December 3 and 4, 1991, and January 6, 7, 8, and 9, 1992. Briefs have been received from counsel for the General Counsel and counsel for the Respondent, respectively, which have been carefully considered.

On the entire record in this case, including my observation of the demeanor of the witnesses and my consideration of the briefs filed by respective counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent is and has been a Delaware corporation with an office and place of business in Spring Grove, Illinois, where it is engaged in the business of printing business forms.

During the past 12 months, a representative period, Respondent sold and shipped from its Spring Grove, Illinois plant finished products valued in excess of $50,000 directly to points located outside the State of Illinois.

Also during the same past 12 months, Respondent, in the course and conduct of its business operations, purchased and caused to be transferred and delivered to its plant goods and materials valued in excess of $50,000 which were transferred to the plant directly from States other than the State of Illinois. The complaint alleges, the Respondent admits, and I find that the Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Local 415-S Graphic Communications International Union, AFL–CIO (the Union) is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

Forms Corporation of America (the Respondent) is engaged in the business of printing business forms at its plant located at Spring Grove, Illinois. In this capacity Respondent, at all times material, employed about 200 employees on 3 working shifts and a weekend shift.

William (Bill) Barclay was employed in 1985 and performed in several supervisory positions, including third-shift supervisor, before he became plant manager in December 1990, with nine supervisors reporting to him. Clyde Packer was employed by Respondent as vice president of manufacturing in mid-August 1990 until October 1991, during which period Plant Manager Barclay reported to him (Packer).

Ellie McEwen was employed as executive assistant to the president in May 1987 where she occasionally helped with personnel matters. In September 1989, she became manager of human resources where she designed and was overseer of personnel policies and procedures, including attendance, insurance, discipline, and personnel programs. McEwen also maintains the employee guide or handbook and when advised by supervisors of serious discipline or writeups of employees, she was sometimes involved in disciplinary meetings.

Don Fowler is plant engineering manager responsible for machine maintenance and supervision of the maintenance department since 1983. Maintenance mechanic Paul Laswell worked under the supervision of Don Fowler on the second shift until he was transferred to the first shift after the union election in February 1991.

The answer admits that the following named persons occupied the positions set opposite their respective names, at various times and that they have been and are now supervisors within the meaning of Section 2(11) of the Act:

Joe Mead — President
Clyde Packer — Vice President
James DiTusa — Press Supervisor-Second Shift
Max Rayfield — Collator Supervisor-Second Shift
Bill Barclay — Production Manager
Don Fowler — Plant Engineer
Tim Coughlin — Collator Supervisor-First Shift[1]

Respondent's Motion to Dismiss

On the first day of trial (December 3, 1991) counsel for Respondent moved to strike the allegations in paragraphs 5(a), (b), (c), (d), (e), (f), (g), (h), and (i) of the complaint on the ground that the allegations are not supported by the charge filed. Counsel contends that the above-identified paragraphs contain assertions alleged to have occurred in December 1990 and January 1991, while the underlying charge only alleges: that on or about February 11, 1991, Respondent engaged in harassing an employee by changing his shift hours and issuing a disciplinary writeup to him, as well as discharging another employee February 11, 1991, both in retaliation for them engaging in union and other protected concerted activities.

Counsel for Respondent further argued that paragraph 5(h) refers to matters alleged to have occurred March 25, 1991, 10 days after the charge was filed on March 25, 1991, and therefore, paragraph 5(h) should be dismissed for the same reason.

In support of his position, counsel for the Respondent cites the Board's decision in *Nickles Bakery of Indiana*, 296 NLRB 927 (1989). There, the *charge* alleged only discriminatory disciplinary action taken by the Company on April 13 and September 27, 1987. The *complaint* alleges maintenance of an unlawful no-solicitation rule on and after April 15, 1987; and that adding this latter allegation in the complaint constituted an improper enlargement of the charge.

The General Counsel contended the printed language on the bottom of the charge form also alleges that ''by the above and other acts, the company had interfered with, restrained and coerced employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act.'' He contends that the above language includes the added 8(a)(1) allegations in the complaint on the no-solicitation rule even though that allegation was not set forth in the charge.

Examining its prior decisions on the subject raised by Respondent's motion, the Board concluded in *Nickles Bakery of Indiana*, supra, that in determining whether a charge is sufficient to support additional allegations set forth in a complaint, it will examine:

(1) Whether the otherwise untimely allegations involve the same legal theory as the allegations in the pending charge.

(2) Whether the otherwise untimely allegations arise from the same factual circumstances or sequence of the events as the pending timely filed charge.

(3) It may examine whether a respondent would raise similar defenses to both allegations.[2]

Thus, applying this test to the pleadings in the instant case, it is noted that the untimely paragraphs 5(a), (b), (c), (d), (e), (f), (g), (h), and (i), of the complaint, if substantiated, would constitute conduct which interferes with, restrains, and coerces employees in the exercise of their protected Section 7 rights, in violation of Section 8(a)(1) of the Act; and that the timely filed charges alleging discriminatory harassment, disciplinary writeup and discharge of employees for engaging in union activity, would probably constitute a violation of Section 8(a)(3) of the Act.

It is further noted that the untimely filed 8(a)(1) allegations set forth in paragraphs 5(a) through (i), of the complaint here, would constitute conduct of an unlawful motive in discriminatorily harassing, disciplining, and discharging an employee and are, therefore, sufficiently related in fact to and arises from the same circumstances and sequence of events as the 8(a)(3) allegations of discrimination set forth in the timely filed charge. Under these circumstances, the 8(a)(3) allegations in the charge involve the same legal theory as the 8(a)(1) allegations set forth in paragraphs 5(a) through (i) of the complaint. *Nickles Bakery of Indiana*, supra.

Moreover, in its answer, Respondent denied paragraphs 5(a) through (j) of the complaint and its motion to dismiss was made for the first time at trial on December 3, 1991. Consequently, Respondent had notice of the allegations and was not surprised. All of the above-referenced paragraphs in the complaint and the paragraph in both charges satisfy the specificity requirement of Section 102.12 of the Board's Rules, because they appear to be set forth as a reasonably ''clear and concise statement of facts constituting the alleged unfair labor practice affecting commerce.''

Respondent also argues that the Charging Party did not raise objections to the election held January 24 and 25, 1991, based on the allegations in paragraph 5 of the complaint. I do not find this argument sufficient to constitute a basis to dismiss the allegations under paragraph 5. Charging Party's failure to raise the essence in the paragraphs under 5 may very well have meant that the Charging Party elected not to take issue with them, not knowing that evidence of harassment and discharge of the two union leaders would surface after the election. Consequently, I find on the foregoing anal-

[1] The facts set forth above are not in conflict in the record.

[2] Although the same sections of the Act are usually invoked, it is not necessary that the same sections be invoked, so long as the allegations are closely related in fact and they are predicated on the same legal theory. *Whitewood Maintenance Co.*, 292 NLRB 1159, 1169 (1989).

ysis of the pleadings and the cited law that paragraphs 5(a) through (i) of the complaint sufficiently satisfy the same factual circumstances ''protected union activity'' and ''same legal theory'' test enunciated by the Board, and should not be dismissed from the complaint. Accordingly, counsel for Respondent's motion to dismiss is denied.

B. *Union Activity of Respondent's Employees and Actions by Respondent Thereafter*

The uncontroverted testimony of maintenance mechanic Paul Laswell, pressman Steve Shelton, and Union Representative Bob Goode established that an October 1990 meeting was held at Andre's Steak House for the purpose of organizing a union. Goode gave the employees union authorization cards and union literature for distribution. While Goode and the employees were in the steak house, they saw Respondent's vice president, Clyde Packer, enter the restaurant.

After the union meeting Laswell proceeded to solicit employees to sign a union card during the lunch hour and after work. He submitted 30–40 signed union cards to the Union. Laswell also distributed union literature, wore a union button, attached a union bumper sticker to his toolbox in the plant, and served as an observer for the Union during the election January 24 and 25, 1991.

Paul Laswell, Steve Shelton, and Rick Schwede served on the inplant Union's organizing committee and the Respondent was apprised of this fact in a letter from the Union (Bob Goode).

Shelton also wore a union button in the plant and he authored one and co-authored another open letter discussing employee benefits and urging unionization. The letters (G.C. Exhs. 2 and 3) were distributed to all employees and posted on the employees' bulletin board. Shelton also had a union sign on his toolbox indicating ''vote yes.''

During the first week in December 1990, Vice President Clyde Packer called Laswell to a meeting in his (Packer's) office. Present were Company President Joe Mead and Laswell's supervisor, Don Fowler. Laswell testified that during the meeting Joe Mead said, ''I understand you are passing out blue cards'' (meaning union authorization cards). He (Laswell) replied, ''yes,'' and Mead said, ''[Y]ou know you cannot pass them out in the production area, you can pass them out before work, in the lunch room or at the employees entrance.'' Laswell responded, ''[Y]es, I know that,'' because Union President Bob Goode had already so instructed them. The evidence failed to show Laswell was distributing union literature anywhere other than the proper places indicated by Mead.

Laswell further testified that about a week after the meeting with Mead and Packer, Printing Supervisor James DiTusa started pushing his (Laswell's) toolbox with the union literature on it into the maintenance cage. Laswell said he told DiTusa to leave his toolbox alone, that he was on his way to another job. DiTusa continued to push the toolbox and he told DiTusa to go talk to Clyde Packer to save one of their butts. Later that afternoon, DiTusa's supervisor, Bill Barclay, called him (Laswell) into the office where DiTusa was present. Barclay told him he (Laswell) could leave the literature on his toolbox but not pass it out when on the job. Laswell said he denied he had distributed literature on the job. At that juncture, Clyde Packer walked in, sat down, leaned back in his chair and said ''what would it take for you (Laswell) to come over to our side Paul,'' and he replied ''nothing.'' Packer kind of chuckled. However Packer denied he asked Laswell what would it take for him to come over to the Company's side and Manager Barclay corroborated his denial.

In September 1990, Laswell spoke to Clyde Packer and Don Fowler about getting additional schooling in electronics. He said they told him yes, but after he talked to Bob Goode of the Union, neither Packer nor Fowler would talk to him about it. (See R. Exh. 4, Mar. 26, 1991.)

In any event, irrespective of minor variations in their testimonial accounts, the evidence is clear that not long after the first union meeting was held that both Laswell and Shelton were openly supporting the Union, and management admittedly knew about their union activity.

Laswell's Inplant Movements Restricted and his Work on Machines Monitored

Paul Laswell testified that prior to the union activity of the employees, if he wanted to work on a particular machine, to do maintenance work, he would simply ask the supervisor because the machines would have to be shut down. If the supervisor said yes, as they generally did, he would then perform the work on the machine. After the commencement of union activity, he noticed Supervisors Jim DiTusa and Max Rayfield would watch and follow him most of the time when he performed work on the machines. He had performed work on the machines most of the time without filling out a work order as was the procedure. No one had ever complained to him about making minor repairs on a machine at the request of an employee.

Laswell further testified that in December 1990, after the onset of union organizing activity and his discussions about the Union with management, Supervisor Fowler approached him near the washroom and asked him to come to his office where he asked him (Laswell) if he had just told someone to vote yes for the Union. Laswell replied, ''[N]o, I had not.'' He asked Fowler who said he did and Fowler would not tell him. About 12 o'clock on the same day, he was talking to Dan Smyth, collator operator, about his gearbox, which had a defective bearing. Supervisor Tim Coughlin, approached him and asked him ''what the hell was he doing.'' He replied he was talking to Smyth about his gearbox and Coughlin said, ''you're full of shit,'' if you don't have a work order you get out of here and I don't want you on my machines unless you have a work order—I don't want you talking to my people. Laswell went back to the maintenance department.

Collator Smyth testified without dispute that the employees occasionally stopped at his machine and talked for a few minutes. He said he did not hear Supervisor Fowler tell Laswell he was ''full of shit,'' adding, that the noisy machines were operating at the time. I credit Smyth's uncontroverted testimony not only because I was persuaded by his demeanor that he was telling the truth, but also because common experience supports the fact that employees in nearly any comparable work setting will occasionally stop at another employees' work station and chat for a few minutes.

Shortly after the above incident, Laswell saw Coughlin in the office talking to Supervisor Fowler. He went into the office to discuss the matter. Fowler told him not to perform

work on any machine unless he had a work order. A little later, Fowler gave him a memo (G.C. Exh. 5), instructing him not to talk to anybody in the production area unless he is sent to work on a machine with a maintenance request form.

Laswell said he had never been written up for talking to production employees about problems about their machine. He asked Supervisor Fowler was he going to give the other maintenance employees a similar memo also, and he said no, he would just tell them about it. Fowler testified he did verbally give the same instruction to other employees. Laswell said other employees did not get such a memo. A few days later Laswell told his fellow maintenance workers about the memo he had been given by Fowler, and Jerry Burns, Jerry Adams, and Tom Pembrook told him it was ridiculous. Fowler did not establish he in fact did give other employees the same instructions he gave Laswell in the memo.

Also in December 1990, Laswell said Supervisor Fowler told him to cover his butt and not go into the front offices unless he informed Supervisors DiTusa and Rayfield, so they could accompany him. Fowler did not deny he so instructed Laswell. Vice President Packer said he had instructed all supervisors not to permit employees in the front office unless they accompanied them. However, it was not established that Packer or other persons of management had instructed other employees not to go into the front offices.

Laswell further testified that during the Christmas party on December 15, 1990, while talking with Supervisor Fowler and other employees, Packer told him I understand that you do farming and he replied, ''yes.'' Packer asked him what did he grow and he replied that is why he liked working the second shift because he could work full time at the Respondent and continue farming.

Interrogation of Laswell

On or about January 15, 1991, Laswell said Vice President Packer called him to the office and asked him did the union vote win. He said he replied, ''no, I don't think so.'' Packer said yes they did, and he replied, no. Packer then asked him why do you want a union in here and he responded, ''it's just not me, almost everybody in the plant wants the union.'' Packer asked why, and he told him the employees would like to have better benefits, better medical and dental benefits. Packer said that's not what your supervisor said, he said the employees were looking for a big raise. Laswell said he denied the employees were wanting a big raise. Packer told him the employees did not need a union here and that he could be like a steward for the employees without a union and talk to him (Packer). He told Packer that is what he was doing now but it was not doing any good. The conversation between Laswell and Packer continued with respect to what Laswell said the employees wanted and what management could give them.

According to Vice President Packer's version of the December 19, 1990 conversations with Laswell, the latter came to his office and asked to talk with him. He said ''yes,'' and Laswell came to his office, and said ''off the record, between you and me,'' he was tired and had concerns about the union drive; that Laswell asked him was there any way he could get out of the union drive, that he was in a long way and did not know if he could change what had transpired, or if anything could be changed—or what would happen to him. He repeatedly asked what would happen to him. Packer said he told Laswell to talk to Ellie McEwen and Joe Mead because he did not know what Laswell wanted to do.

Within a couple of days Packer said Laswell asked to talk to him again, and he said ''yes.'' Laswell came to the office and told him he had done a lot of thinking about the subject of their last conversation; that he would really like to see this thing come to an end, be put off, because he had previously said he did not feel well and was concerned about his wife, who wanted him to pursue the union drive. He was going to talk to her over the weekend about it. Laswell denied he ever talked about calling off the union campaign and said it was Packer who called him into his office and initiated conversations with him about the Union.

Packer further testified that the following Monday, Laswell asked to talk to him and he said ''yes.'' Laswell told him he was not going through with calling the Union; that he was in so deep that he was committed. Packer said he made no response. Laswell denied he ever told Packer he was sorry he got involved or that he wanted to abandon the union effort.

Packer admitted he had told supervisors in a meeting that Tuesday, that an employee (Laswell) was possibly going to defect from the Union. He denied he ever said anything to Laswell about being a steward or serving like a steward for the employees; and that it was Laswell who talked about improving working conditions and benefits, and he told Laswell he gave his word but he was not president of the Company. He suggested Laswell talk to President Joe Mead and Laswell said Joe was not good enough, he wanted to go higher, like to the owner, David Chandler. Thereafter, Packer said he set up a meeting with Chandler for Laswell, but later Laswell said he had to cancel the meeting.

Laswell denied he canceled the meeting with Chandler but rather, said Packer told him the meeting was off. When he asked why, Packer sort of shrugged his shoulders. Packer admitted he asked Laswell could he influence the union vote because in that way he told Laswell he could influence the employees that they don't need a union. He also acknowledged he told Laswell Respondent could do more for the employees than the Union could do; that having a union does not mean employees would have a retirement plan because that would have to be negotiated; and the same would be true of seniority rights. He denied he promised Laswell any benefits but admitted he told him if he stopped the union drive it would help his credibility with management.

Laswell further testified that on January 23, the day before the first voting of the union election, Vice President Packer was wearing a vote-no union button and Laswell was wearing a vote-yes button. As they passed one another Packer pointed to his vote-no button and said we've got the vote won. Laswell said no, I don't think so, and Packer said ''you passed up a hell of an opportunity for yourself.'' Laswell said he replied, ''that may be true, but that's the way it is.'' Packer denied he told Laswell he passed up ''a hell of an opportunity for benefits.'' The union election was held on January 24 and 25, 1991, and the Union was defeated.

Plant's Parking Lot

Respondent provided free parking for its employees on a lot adjacent to the front of the building but it was inadequate to accommodate all of the work shifts' parking as they

changed shifts. Consequently employees frequently parked in the shipping–grassy area where Laswell also parked.

Laswell drove a 1-ton four-door Dooley pickup truck which would not fit into the regular parking spaces. On February 8, 1991, Supervisor Fowler told Laswell not to park his truck in the shipping area. Laswell replied there were no parking spaces and that President Joe Mead told the employees at the advisory board meeting that they could park in the grassy area if there were no other parking spaces. Laswell said if he did not park in the restricted area there wasn't any place for him to park and the employees would have to go home. Fowler ordered him not to park there and Laswell said ''Okay.''

During the latter part of February 1991 Supervisor Fowler asked Laswell why was he parked in the shipping area because Clyde Packer had asked him why was he parked there. Laswell said because there were no spaces, although he said three or four other cars were also parked there. The following day Supervisor Fowler gave him a writeup even though he was not parked in the shipping area but in a designated parking space.

On March 6, 1991, Supervisor Fowler gave Laswell a disciplinary warning (G.C. Exh. 4) for parking in the shipping area on March 5. Laswell said the following 2 days he saw other employees (Lucy Heide and Darlene) parked in the shipping area. He said he does not know any other employees who received a warning for parking in the shipping area, and there were no ''no-parking'' signs in the shipping area.

After the writeup, Supervisor Fowler asked Laswell on one occasion to move his truck in between the lines and Laswell told him the truck was too large. Thereafter, Laswell said he came in early, sat around until the shift changed, and parked in the parking lot. He said he never parked in the restricted area after March 6, 1991.

The essentially uncontroverted and credited evidence of record established that in late March, President Packer approached Laswell while he was wearing a button which read ''It's Not My Fault,'' Packer asked Laswell ''If its not you fault, whose is it.'' Laswell explained that when employees told him he should not be talking about the Union since the Union had lost the election, he would simply point to the button. Packer told him he had a bad attitude because he was still angry about the Union losing the election. Laswell replied, he did not have a bad attitude, but said if he had one, it was because management was harassing him about everything.

Laswell's Discussions with Management About a Voluntary Layoff

Packer acknowledged he told Laswell he (Packer) knew he (Laswell) was still vocally advocating unionism, that Laswell had a bad attitude, and that he planned to get rid of employees who did not change their attitude. Laswell asked Packer whether he had told Supervisor DiTusa that he (Laswell) was going to be out before the Union came back. Packer responded, ''if you don't do your work, I will let you go.'' Packer acknowledged he told other supervisors on the date of the election that Laswell would not be around for another election. Laswell said Supervisor Dan Blair had told him about Packer's statement.

Packer testified that in late March Laswell asked him was he going to be terminated and he told him as long as you perform your job and not violate the attendance policy you should not be terminated.

Laswell testified that in late April or early May 1991, having weathered much harassment by management, he met with Packer alone to try to obtain a voluntary layoff. During their meeting Packer revived his discussions about advantageous opportunity for Laswell during the union campaign to influence him to persuade others to vote against the Union. Laswell said he told Packer if he still had anything to offer him, he was willing to make a deal. He would take a voluntary layoff and in that way he would not be in Respondent's employ next January. Packer told him he could drop the NLRB charge then pending against Respondent. When he (Laswell) said he would have to check with the NLRB about dropping the charge, Packer gave him the telephone number for the Board agent investigating the charge, and told him to use the telephone in the next room. Laswell made the call but said the agent was not available. Thereafter, the meeting ended.

Laswell further testified that he met again with Packer in May to discuss the same concern, but this time, Personnel Manager McEwen was present. He expressed his concern about her presence but Packer said he told Laswell it was alright for her to remain. Laswell said he then told Packer if he was given a voluntary layoff he did not want Respondent to challenge his claim for unemployment compensation because he wanted to have something coming in until he obtained another job. A day or two later Laswell said he discussed the matter with the Union's attorney and no agreement was made between himself and Packer regarding a voluntary layoff. In late May 1991, Laswell went on sick leave where he remained until he quit August 2, 1991, out of exhaustion from harassment by management, he said.

According to Packer's account of the layoff conversations, Laswell asked to speak with him and he said, yes. When Laswell arrived to his office, Ellie McEwen was present and Laswell did not want to talk with her present. He told Laswell, McEwen was the Company's personnel officer. Finally, Laswell asked for a voluntary layoff and said he would drop the charges filed with the National Labor Relations Board. He told Laswell ''yes,'' but asked him to put his request in writing. Laswell said he had to talk with the Board's investigator, Judy Davis, but later said he was unable to contact her or counsel for the Union. Laswell also told him, with emphasis, in McEwen's presence, that in no way could Union Representative Goode or the Union ever learn about his meeting with them, or that he was contemplating submitting a written request for voluntary layoff, because he had concerns about what the Union might do to hurt him. He said, while looking directly at him (Packer), he would hurt someone else. Finally, Laswell said he had to talk this over with his wife. Packer's testimonial account in this regard is only partially corroborated by Ellie McEwen and me received the impression that McEwen was more or less acquiescing in Packer's version of the conversation. I was not persuaded she was testifying freely as though she had witnessed the entire conversation with Laswell.

On rebuttal examination, Laswell essentially denied Packer and McEwen's version of the conversations about dropping charges against Respondent and his concern about the Union attributed to him by Packer, and McEwen tacitly agreeing.

Laswell also admitted that in early May 1991 he told Ellie McEwen and Clyde Packer if the Respondent would approve a voluntary layoff and approve his unemployment compensation, he would take it, because he was tired of being harassed. He denied he conditioned his acceptance of a layoff on withdrawing his charge with the National Labor Relations Board.

Laswell admitted he voluntarily went in to talk to Packer on two occasions when the Union was discussed but on all other occasions, he said Packer called him into the office and talked about the Union.

Laswell admits he could have been the one to raise the subject of the Union after Packer asked him, if it is not your fault whose is it.

Analysis and Conclusions

The record is replete with highly conflicting testimony about various conversations concerning Laswell's and other employees' union organizing activities, which took place on several occasions between Paul Laswell and Vice President Clyde Packer, and to a lesser extent between Laswell and other members of management as follows: Joe Mead, Bill Barclay, Don Fowler, James DiTusa, and Max Rayfield. All of the subject conversations occurred after the commencement of the employees' union organizing activities in early October 1990, and continued up to and through the union election on January 24 and 25, 1991.

It is particularly noted that regardless who was in fact testifying truthfully, Laswell or members of management, it is uncontroverted and clear, that primarily Company President Clyde Packer, sometimes initiated and freely engaged in conversations with Laswell about his and other employees support for the Union. The record does not show that Packer or other members of management ever gave Laswell any assurances against reprisal for their often initiated free and open discussions with him about unionization.

Although each side (Laswell and management) accuses the other of initiating the subject conversations, I find upon the demeanor of the witnesses as well as the total evidence of record that some conversations were initiated by Laswell and some by management. Notwithstanding, the conflicting accounts of the parties (Laswell and Packer or other members of management) as to who said what during those conversations, the evidence is uncontroverted that Paul Laswell and Steve Shelton were notoriously open supporters of the Union. Respondent (members of management) was fully knowledgeable about their leadership role in support of the Union. The evidence is also essentially uncontroverted that prior to the onset of union activity, Laswell moved about the plant repairing and maintaining the machines, sometimes with or without permission from supervisors or a work order to work on the machines, and without supervision or close scrutiny of his performance by management.

Moreover, the credited evidence clearly demonstrates that Laswell has worked for Respondent as a maintenance mechanic since September 1987. The evidence shows that it was not until after Laswell's union organizing activities were in progress during October, November, and December 1990, and January 1991 and thereafter, that Second-Shift Supervisors James DiTusa and Max Rayfield proceeded to accompany or follow and closely observe him as he moved about the plant performing his job. In December, without any stated reasons, plant engineer Don Fowler ordered Laswell not to go into the area of the front offices unless he informed Supervisors DiTusa or Rayfield, so that they could accompany him.

In view of Laswell's open and notorious union organizing activities of which Respondent was not only fully aware, but also manifested a participating conversational interest with him, I find that Respondent's change in practice to restrict Laswell's free movements from the front office area, and the new practice of supervisors following or accompanying and monitoring his movements as he performed his work, tended to create the impression that his and other employees' union activities were under surveillance by Respondent. I find that Respondent's conduct had a coercive and restraining effect on the exercise of employees' organizing rights, in violation of Section 8(a)(1) of the Act. *Gencorp*, 294 NLRB 717, 731–732 (1989).

Additionally, since the timing of Respondent's restriction, close monitoring, and surveillance activities did not commence until only a few weeks after the onset of Laswell's open union organizing activities, I find that it may be reasonably inferred from such circumstances that Respondent's conduct was unlawfully motivated. *Aluminum Technical Extrusions*, 276 NLRB 1414, 1418 (1985); *Limpert Bros.*, 276 NLRB 364, 374 (1985).

The evidence is uncontroverted, it is clear, and consistent with Laswell's account that in December 1990, he was called into a meeting with President Joe Mead, Manager Clyde Packer, and Supervisor Don Fowler, where Mead, without any discernable reason, asked Laswell about his distribution of union authorization cards, instructed him where and when he could distribute them; and that Supervisor Jim DiTusa approached Laswell and instructed him not to display union literature on his toolbox. When Laswell protested removing the literature, he was called to a meeting in Manager Barclay's office where Barclay told him he could keep the literature on his toolbox but he could not distribute union literature on the job. It was not established by the evidence that Laswell had improperly distributed union literature on the job.

Laswell testified that eventually President Clyde Packer entered the meeting and asked him what it would take for him to come over to the Company's side. I credit Laswell's account not only because I was persuaded by his demeanor that he was testifying truthfully, but also because his account is consistent with the credited evidence of record of Respondent's persistent inquiries of Laswell about the union and its antiunion conduct prior and subsequent to December 1990, infra.

I further find that Respondent's established surveillance of Laswell's and other employees' union activities does not lend credence to Packer's weakly controverted testimonial account of his conversations with Laswell. I therefore further credit Laswell's account of those heretofore described conversations with Packer and other members of management. I also credit Laswell's account because I was *especially persuaded* by the demeanor of President Packer in this proceeding, that he was not testifying truthfully but that he appeared for the purpose of testifying in favor of management, in an effort to justify management's unlawful conduct as found in this decision. Aside from the abundance of circumstantial evidence in the record supporting this conclusion, I could not have been more persuaded by the demeanor of a witness that

he or she was not telling the truth, than I was by the demeanor of Vice President Packer.

Having credited Laswell's testimonial account over the testimonial accounts of Packer and McEwen in this regard, I further find that Vice President Packer's question of Laswell as to what it would take for him to come over to the Company's side, asking him whether he thought he could get rid of the Union, telling him he could get rid of the Union by simply calling the union organizer, Bob Goode, telling him he could serve like a steward for the employees without a union at the facility, and asking him whether he could sway some yes votes to no votes, clearly constituted an implied promise of benefits to him if he would abandon the union effort and solicit support for the Respondent against unionization. *Marshalltown Trowels Co*., 293 NLRB 693, 697 (1989); *Central Washington Hospital*, 279 NLRB 60, 63–64 (1986); *McCarthy Processors*, 292 NLRB 359, 367 (1989); *General Motors Corp*., 234 NLRB 995, 996 (1978). *A.J.R. Coating Division Corp*., 292 NLRB 148, 162–163 (1988).

As such, Packer's conduct had or tended to have a coercive and restraining effect on the employees' organizing rights, in violation of Section 8(a)(1) of the Act. *A.J.R. Coating Division Corp*., supra at 162–163.

Additionally, Vice President Packer's asking Laswell whether he could get rid of the Union, whether he could change yes votes to no votes or whether he could help get the Union out, without giving him any assurances against reprisal by Respondent, also constituted coercive interrogation of Laswell regarding his union sentiments and the union sentiments of other employees. When Laswell finally told Packer he would not abandon the Union or help to change yes votes to no votes, Packer told Laswell he had passed up one hell of an opportunity for himself. Implicit in the latter remark by Packer to Laswell, under the total circumstances in this record, clearly implied a threat that Laswell would not be rewarded with benefits in the future because of his support for the Union. It also made evident that Packer's prior questions of Laswell were implied promises of benefit to him if he would abandon the Union and support Respondent's opposition. I therefore find that such threats had or tended to have a coercive and restraining effect on the exercise of employees organizing rights, in violation of Section 8(a)(1) of the Act. *Phillips Industries*, 295 NLRB 717 (1989).

Threat of Discharge

The record further shows that Daniel Blair, a supervisor employed by Respondent from December 18, 1989, until September 6, 1991, testified that shortly after the union election votes were counted, he went into the production office where Supervisor DiTusa was present. DiTusa told him Vice President Packer told him he (Packer) saw Laswell and the union president shake hands after the vote count, and the union president told Laswell he would be back next year. Blair said DiTusa told him Packer turned to him (DiTusa) and told him that Paul Laswell would not work there next year. In testifying, DiTusa admitted he told Blair in January 1991 that Laswell would not be there for another union election. Likewise, Vice President Packer admitted he told other supervisors after the vote count that Laswell would not be around for another union election. He said he told supervisors that because Laswell had told him how tired he was and that he did not feel well. However, a conclusion that Laswell was going to quit does not logically follow from the fact that he said he was tired and did not feel well.

Consequently, under the specific circumstances here, and the total credited evidence in this record, I discredit Packer's latter explanation for his statements to Blair and other supervisors. It is clear from the evidence that he did not want Laswell in Respondent's employ to enable him to have another opportunity to try to organize Respondent's employees.

Since Blair's testimony is essentially substantiated by the testimony of DiTusa and Vice President Packer, I credit Blair's account because I was also persuaded by his demeanor that he was testifying truthfully and Packer was not. Consequently, I find that Supervisor Blair told employee Laswell that Packer told supervisors he (Laswell) would not be in Respondent's employ for the next election, and that such a statement from a supervisor under the circumstances constituted a threat to terminate Laswell's employment before another election could be held a year later. It is clear from the record evidence supra and infra that such threat to discharge Laswell was motivated by his open and notorious support for the Union, and his manifested intentions to continue his organizing effort next year, of which fact the evidence shows Respondent (Packer) was fully aware. Under these circumstances the threat of Laswell's discharge had or tended to have a coercive and restraining effect on the exercise of employees' Section 7 rights, and was violative of Section 8(a)(1) of the Act. *Gencorp*, supra.

According to Laswell, near mid-March 1991 Supervisor Don Fowler asked him whether he had just talked to somebody or told someone to vote yes for the Union. Laswell said ''no'' and asked Fowler who told him he had such a conversation but Fowler refused to tell him. The credited evidence of record shows that after the Union lost the election on January 25, 1991, Laswell told disgruntled employees they would have another chance for unionization in a year and they could look forward to making another effort to organize next year.

Since Supervisor Fowler asked Laswell whether he was talking about the Union after the union election, and since Packer saw Laswell shake hands with the union representative and heard the latter tell Laswell he will be back next year, Respondent knew or had good reasons to believe Laswell would not abandon his efforts to unionize the Respondent in the future. Consequently, I find that Supervisor Fowler's question of Laswell about talking to employees about the Union was coercive interrogation, and had or tended to have a coercive and restraining effect on employees' organizing rights, in violation of Section 8(a)(1) of the Act. *Great Dane Trailers*, 293 NLRB 384, 384 (1989), *Rossmore House*, 269 NLRB 1176 (1984).

The evidence shows that near mid-March 1991, while passing by Supervisor Don Fowler, Fowler noticed Laswell was wearing a button which read ''It's not my fault.'' Fowler asked him ''If it's not your fault, whose is it?'' Laswell said he told Fowler that a number of people had approached him and told him there had already been a ''no vote'' and he should not start talking about the Union. He said he responded to them by pointing at his button. Fowler told him he had a bad attitude and was still angry because the Union lost the election. Laswell told Fowler he did not have a bad attitude, but if he did have one, it was because

Respondent's management kept harassing him about everything.

Fowler admitted he told Laswell he had a bad attitude, and that he planned to get rid of employees who did not get rid of their bad attitude. Since the evidence fails to provide any reason for Packer telling Laswell he had a bad attitude other than Laswell's past and continued support for the Union, I find that it may be reasonably inferred from Packer's bad attitude statement that it had reference to Laswell's continued effort to unionize Respondent.

Consequently, I further find that Packer's statements constituted a threat to discharge Laswell for his continued (bad attitude) support of the Union, in violation of Section 8(a)(1) of the Act. *Gencorp*, supra.

Transfer of Laswell

A determination of the substantiality of the allegations with which the Respondent is charged and the corresponding denials or affirmative defenses asserted by it in response thereto depended, in large part, on a determination of the veracity of the several witnesses for the respective parties, which is highly conflicting. Although it is often difficult to resolve such vexed questions of fact to which only the individual parties bear witness, I have nonetheless resolved such questions, not only by observing the demeanor of witnesses on the stand, but also by considering the relationship of each witness to the party on whose behalf he or she testified (fellow employee, fellow managerial or supervisory personnel, whether formally or currently employed by Respondent, reasons for separation from employment), how readily responsive, nonselective, nonexaggerating, consistent and straightforward the manner in which testimony was given, as well as efforts or failure of the parties to produce witnesses who were in a position to deny or corroborate their respective versions, and how such testimony or other evidence relates to the logical consistency of the total record evidence and sequence of events as they transpired.

Alleged Discrimination Against Paul Laswell and Steve Shelton by Respondent

The complaint alleges that Respondent discriminated against Paul Laswell in the following ways:

(a) By transferring him from second shift to first work shift on February 18, 1991.

(b) By issuing him a warning slip for parking off the road near the plant on March 7, 1991.

(c) By harassing and yelling obscenities at him on March 12, 1991.

(d) By issuing him a written memo on March 12, 1991, ordering him not to talk to a production employee.

The complaint further alleges that Respondent discriminated against Steve Shelton in the following ways:

(e) By discharging him on February 27, 1991.

(f) By, at all time since February 27, 1991, refusing to reinstate him to his former position, and that Respondent so discriminated against both Paul Laswell and Steve Shelton because they engaged in, and manifested intentions to continue to engage in protected concerted union activities, in violation of Section 8(a)(3) of the Act.

Respondent denied it has so discriminated against Laswell and Shelton because they engaged in and indicated they would continue to engage in protected concerted union activities, and it affirmatively contended at the trial that Laswell was transferred from second shift to first shift for business reasons, and that Shelton was discharged pursuant to Respondent's absence call-in policy.

Since the Respondent contends Laswell was transferred for business reasons and issued a warning slip, a memo, and a disciplinary warning to him for cause, and that Shelton was discharged for cause, and not for their protected concerted or union activities, the issues raised by Respondent's defense call for consideration of the *Wright Line* doctrine enunciated by the Board in *Wright Line*, 251 NLRB 1083 (1980). There, the Board held ''that in such 8(a)(3) cases, the General Counsel must first make a prima facie showing sufficient to support the inference that protected concerted conduct was a 'motivating factor' in the employer's decision and once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the employees' protected conduct.''

Thus, the first question raised under the *Wright Line* doctrine here is whether the General Counsel has made a prima facie showing that Respondent's alleged discriminatory action against Laswell and Shelton would have taken place even if Laswell and Shelton were not engaged in protected concerted or union activities.

With respect to Paul Laswell, the following must be borne in mind as hereinbefore found, that Respondent:

(1) Coercively and unlawfully interrogated him on several occasions about his leadership role in attempting to organize a union.

(2) That management clearly gave him the impression that his union organizing activities were under surveillance by Respondent.

(3) That after the onset of union activities, his in-plant movements were restricted, and he was more closely observed and monitored by management as he performed his job.

(4) That management (Packer) promised him benefits if he would abandon his efforts to unionize the Respondent.

(5) That management initiated several conversations with him in which it interrogated him about his union interest and activities and that of other employees, without giving him any assurances against reprisal by management for engaging in such activities.

(6) That management threatened him with loss of future benefits by telling him he passed up a wonderful opportunity by not abandoning his union support and supporting Respondent's position.

(7) That management threatened to terminate his employment by telling him he had a bad attitude and it was going to get rid of employees who did not change their bad attitude (abandon their support for the Union).

(8) Management (Blair and Packer) threatened to terminate his employment before another union campaign and election could be held.

Transferred

In addition to Respondent's above-described unlawful antiunion actions in response to Laswell's union activity, the uncontroverted evidence shows that on February 15, 1991, only 3 weeks after the union election on February 24 and 25, Respondent abruptly transferred Laswell from the second shift to the first work shift. When Laswell was first being

considered for employment he expressed his preference for the second shift to Supervisor Don Fowler because he operated a farm during the other daylight hours. He was hired in an open position on the second shift in September 1987. The evidence further shows that Supervisor Fowler confirmed his knowledge of Laswell's daytime farming operation when he undeniably and, probably tactfully, asked Laswell about his farming operation in late December 1990, only a couple of weeks before his transfer in January 1991.

When Laswell asked Supervisor Fowler why was he transferred to the first shift he was told because Vice President Clyde Packer wanted that way. When Laswell asked Packer why was he transferred Packer told him that was between Supervisors Don Fowler and Jerry Maynard, Fowler's supervisor. Both Fowler and Maynard worked under the supervision of Clyde Packer. When Laswell asked Supervisor Maynard why was he transferred, he was given a third reason for his transfer. Maynard told him his transfer was temporary, for a short time, because the employees in the maintenance department were not working together, and he wanted each worker to learn to work with everybody. Maynard said he was going to make other changes in work shifts but the record does not show that other work shift changes were made at that time. Moreover, 2 weeks after Laswell's transfer, Supervisor Fowler told him his transfer was permanent and Laswell remained on the second for the duration of his employment with Respondent.

Notwithstanding, while testifying during the trial here, Supervisor Don Fowler for the first time gave a fourth reason for Laswell's transfer. He stated that Laswell was transferred from second to first work shift because the workload on the first shift needed help which did not require electrical skills. He said he was having a lot of electrical problems (unidentified) on second shift which required someone with electrical skills. Therefore, he hired a former employee, Jerry Burns, who had such electrical skills. He denied Laswell's union activity had anything to do with Respondent's shift transfer of him.

In evaluating Respondent's conduct with respect to Laswell, it is particularly noted that the record shows that Laswell's tenure in Respondent's employ from September 1987 to November 1990 was essentially uneventful. Union activity of Laswell and other employees commenced in October 1990. It was not until December 1990, only 4 to 5 weeks before the union election on January 24 and 25, 1991, when Laswell apparently became a problem for Respondent. It was during this period when most of Respondent's unlawful 8(a)(1) conduct, involving Laswell, occurred.

The record shows without contradiction, that efforts by Respondent to intimidate Laswell by making him conscious that Respondent knew about his organizing efforts, restricting, closely observing and monitoring his in-plant movements, promising him benefits, interrogating him and threatening him, were not successful during December and early January. the Union lost the election on January 25, 1991, and Respondent (Packer) learned on that day that another union effort would be made by Laswell and the union representative a year later. Respondent further learned that Laswell was still committed to organizing the Union a year later, so it decided to turn up the heat, by issuing a warning slip to him for parking his truck near the plant (where other employees also parked), making his work schedule inconvenient with his farming schedule, by transferring him from second to first shift, and issuing a written warning to him for talking to a fellow employee without a work order.

It is also noted that Laswell was transferred from second to first shift by Supervisor Don Fowler only 3 weeks after the election, while he knew that Laswell preferred to work the second shift so that he could continue to work his farm. Respondent has known since Laswell was employed, that Laswell wanted to work the second shift so he could continue his farming.

Considering all the credited evidence of record most favorable to Respondent, I am persuaded, and I find that the General Counsel has made a prima facie showing sufficient to support an inference that Laswell's past and contemplated continued protected conduct was a motivating factor for Respondent's actions in issuing him warnings and transferring him from second to first shift.

The General Counsel having made the required prima facie showing that a motivating factor for Respondent's harassing and unlawful conduct against Laswell was his protected past and continued concerted and union activity, the burden now shifts to the Respondent to demonstrate by a preponderance of evidence, that the same actions would have taken place even in the absence of Laswell's protected conduct. *Wright Line*, supra.

The Respondent is asking me to believe that it's transfer of Laswell from second to first shift was for business reasons and its warnings to him were for cause.

However, it is clear from the record evidence in this case that the Respondent undeniably gave Laswell three different reasons for transferring him. Supervisor Fowler told him he was transferred because Clyde Packer wanted it that way. Vice President Packer told him his transfer was determined by Supervisors Fowler and Maynard, who work under his supervision. Supervisor Maynard told him his transfer was temporary, to help with the workload on first shift, and to allow other employees to work with everybody. However, Supervisor Don Fowler later told Laswell his transfer was permanent.

At the trial here, Supervisor Don Fowler testified that Laswell was transferred to help with the workload which did not require electrical skills; and because electrical problems on the second shift required someone with electrical skills. Supervisor Fowler's testimony is not corroborated in this regard. More significantly, no evidence, documentary or otherwise, was produced to support his latent account. However, in view of the shifting reasons given Laswell for his transfer, Supervisor Fowler's testimonial account, which contradicts the reason he gave to Laswell (because Packer wanted it that way), as well as the overwhelming evidence which is inconsistent with his explanation, I discredit his testimonial account. I discredit his account not only because I was persuaded by his demeanor that he was not testifying truthfully, but also because it is contradictory to the logical consistency of all of the credited evidence of record.

Additionally, Laswell testified without dispute that he and other fellow employees have been parking their vehicles (cars and trucks) near the plant in the contended restricted parking area since 1987. At no time did any member of management warn or discipline any of them for parking in that area until Laswell was restricted and disciplined for parking there, after the onset of union activity and the union election

held on January 25. Respondent learned on that day and thereafter, that Laswell and Shelton would make a second effort to unionize Respondent a year later. At the time (February 1991) Respondent proceed to single out Laswell for parking restriction and discipline.

It was particularly noted during the trial here in that Respondent (Vice President Packer), in describing conversations he held with Laswell, stated that the latter appeared confused about continuing his union effort, wanting to change his mind about it, and expressing apprehension of harm to himself by the Union if he negotiated a voluntary layoff, or abandoned his union effort. In testifying, Packer at times, made it appear that Laswell was confused and unstable about his objective. However, in observing the demeanor of Laswell, I did not receive any impression that he was anything other than determined to unionize Respondent. He is a large man and did not appear to be put in fear easily. He had no history of emotional instability but became highly disturbed and exhausted from Respondent closely watching him suddenly restricting his parking and movements, and issuing disciplinary warnings only to him, for parking and talking to a fellow worker during work hours (harassment) in response to his support for the Union.

Laswell was treated by his physician briefly with tranquilizers until he could no longer tolerate Respondent's conduct and quit its employ. Respondent did not present any evidence of any other employee being treated as Laswell and Shelton for any alleged reason.

Consequently, I find that the evidence clearly demonstrates that Respondent wanted Laswell out of its employ before he had an opportunity to help unionize Respondent in January 1992. In order to accomplish this objective, Respondent embarked on a pattern of technical harassment of Laswell by singling him out for frivolous warnings, restricting him from talking to maintenance mechanics without a work order, and transferring him from second to first shift to conflict with his farming operations, all with hopes that he would quit and not be in its employ to help organize a union in 1992. *Lotts Electric Co.*, 293 NLRB 297, 306 (1989); *Gencorp*, 294 NLRB 717, 725, 731–732 (1989). Respondent accomplished its mission and its reasons given for its actions are pretextual.

Consequently, I further find that Respondent has failed to establish by a preponderance of the evidence that its warnings, work restrictions, and transfer actions in regard to Paul Laswell would have taken place even in the absence of his protected concerted conduct. Consequently, Respondent's conduct was motivated by Laswell's protected concerted conduct, and was therefore discriminatory and in violation of Section 8(a)(3) of the Act. *Wright Line*, supra; *Gencorp*, supra.

The Discharge of Steve Shelton

The uncontroverted and credited evidence of record shows that Steve Shelton was employed by Respondent January 25, 1984, and that he worked as a pressman under the supervision of James (Jim) DiTusa. The Company was not unionized at the time he was hired.

However, in mid-October 1990, Shelton, Paul Laswell, and six other employees attended an initial organizing meeting with Union Representative Bob Goode. Thereafter, Shelton distributed union authorization cards and solicited employees' signatures during breaks and lunch periods in the cafeteria, and at the employees' entrance-exit gate before and after work hours. He also wore a union button and authored an open letter to employees about the Union, which was posted on the employees' bulletin board. He had union signs stating ''vote yes'' attached to his toolbox and he served on the in-plant union organizing committee, of which facts Respondent was fully aware.

On January 3, 1991, Supervisor DiTusa came to Shelton's work station, noted the signs on his toolbox, and told him to take the ''vote yes'' signs down because if he did not, President Clyde Packer had directed him (DiTusa) to take them down. Shelton asked DiTusa what was wrong with the signs because he did not see anything wrong with them—the employees were within their rights simply displaying the signs. DiTusa told him the signs constituted a violation because they were displayed in a work area. On January 7, 1991, DiTusa came to Shelton's work station, read a sign on his toolbox and said, ''I don't think you said that—that is derogatory.'' The sign read ''FCA fails to cooperate'' (Form Corporation of America fails to cooperate). Shelton told DiTusa ''I think I can say that'' and DiTusa said ''We'll see about that'' and walked away. Thirty seconds later, DiTusa returned and informed him that Packer said he can have the sign in his toolbox but he had to keep the lid closed. Shelton told him the Union's lawyer told him he was within employees' rights and he felt he was being harassed and refused to close his toolbox.

The next day Shelton was called to a meeting with Manager Bill Barclay and Supervisor DiTusa in the conference room. Barclay asked him what did the wording of the sign on his toolbox mean. He told them it meant what Webster's Dictionary defines as cooperation. He asked was it okay for him to display the sign and Barclay said yes, but asked why did he want a union anyway. He told Barclay he wanted a union because his father was a union member at his job and it was good for people—for the employees there, and he was prounion. Barclay told him to go back to work.

Shelton served as an observer for the Union during the election held January 24 and 25, 1991. The Union lost the election and he told certain discouraged employees they would have another chance to unionize Respondent after 1 year.

Respondent's Policy on Absences

Human Resources Manager Ellie McEwen testified that Respondent's policy on employee absences implemented in 1986 is as follows:

If an employee calls in sick the first day, he or she is considered absent with notice (AWN) and the employee is assessed one point. However, each succeeding day out when the employee calls in, is considered a continuing illness and no points are assessed. If the employee is out for more than 3 successive days, he or she must submit a doctor's note on return, stating the dates the employee was out and the reasons why he or she was out.

If an employee presents a doctor's statement to Respondent indicating that the employee will be out for a definite number of days (3 weeks), the employee does not have to call in daily.

In mid-January 1991, Respondent installed a call-in telephone in the center of the plant's floor. When an employee

called in supervisors were directed to record the name, message, date, and time of the call in the logbook situated near the telephone; and the employees were not to answer the phone and relay messages to supervisors. Although Company Official Barclay testified employees were not to answer and take messages on the phone, he failed to establish that Respondent had established, announced, or published such a policy, or that employees did not in fact answer the phone and take messages on occasion.

Shelton testified he called in sick on the sick line telephone number Monday, February 18, 1991, and press operator Dan Breen answered the phone. He told Breen he was sick and Breen said he would inform the proper persons. Shelton's timecard for that workweek (R. Exh. 17) was admitted in evidence over the objection of counsel for the General Counsel. In the Monday column on the card (Feb. 18, 1991) is marked ''AWON'' (absent without notice) and initialed J. D. (James DiTusa). However in the same column appears blue marks clearly showing that something was well scratched out. It is the scratched-over indication to which the General Counsel objected for admission. However the bench admitted the document because of the conflict in testimony between Shelton, who said he called on February 18, and Respondent's denial and contention that Shelton did not call in on that date.

In this regard, Supervisor DiTusa testified that he marked Shelton's card AWON about 4 p.m. Monday, February 18 and initialed it. At first he testified he did not know whether the blue ink scratch-out was on the card when he wrote on it. On further examination, however, DiTusa said the scratched out mark was already on the card when he wrote on it. DiTusa acknowledged he was responsible for indicating attendance and phone calls related thereto on the timecards, but he had no explanation for the blue scratch-out marks.

DiTusa further testified that when he later asked Dan Breen had he taken a sick call from Shelton, Breen said ''yes'' but did not give him a date. It is particularly noted, however, that DiTusa does not say that he asked or tried to establish a date through Breen when Shelton called in. DiTusa acknowledged Shelton told him he had called in Monday, February 18, and informed Breen he was sick but said he did not receive a message from Breen on that date.

DiTusa also acknowledged that during Shelton's exit interview Shelton told Resource Manager Ellie McEwen that he had called in Monday, February 18, and informed Breen that he was sick and would not be in, and McEwen said she did not receive any message. DiTusa said McEwen said she had previously asked Breen had he received a call from Shelton and Breen said he took one call but did not state what date. Again, DiTusa does not say whether McEwen ever asked Breen for a date and it is noted that neither DiTusa nor McEwen gave Shelton the benefit of the doubt on the date (February 18). It is particularly noted that Dan Breen is still employed by the Respondent but he did not appear and testify in this proceeding and no explanation was made for his nonappearance.

Additionally, Production Manager Bill Barclay testified that on Tuesday, February 19, he learned from Supervisor Don Lee that Shelton had called in sick and he (Barclay) marked the journal ''2-19-91, Shelton sick.'' He said Lee told him he had received the message from Dan Breen. However, it is also noted that Don Lee did not appear and testify in this proceeding and no explanation is offered for his nonappearance. Supervisor DiTusa testified that neither Supervisor Don Lee nor press operator Dan Breen told him Shelton had called in, so he marked Shelton's card absent without notice.

McEwen testified that Dan Breen told her Shelton had called in sick Tuesday, February 19, and that he gave the message to Supervisor Don Lee. The latter testimony is discredited since neither Breen nor Lee appeared or testified. McEwen denied DiTusa said during the exit interview that Shelton did call in on Monday, February 18, and talked to Breen and, therefore, he (Shelton) should not receive two points.

Shelton testified he called in February 19 and told Manager Barclay he was still sick and would not be in. DiTusa testified Barclay told him Shelton had called in February 19 and Respondent's Exhibit 12 marked AWN supports DiTusa in this regard. Consequently, I credit DiTusa's latter testimony because it is supported by Respondent's Exhibit 12 and is consistent with Shelton's account that he called in on February 19.

On Wednesday, February 20, the logbook, in Dan Breen's handwriting, shows that ''Steve Shelton won't be in sick.'' Barclay denied Dan Breen ever answered the phone and handed it to him, telling him it was from Shelton. However, Breen's handwriting is self-serving and disregarded since he did not appear and testify in this proceeding. Breen was not established to be a supervisor. However, Shelton's testimony that he called in February 20 is credited over Barclay's denial.

Manager Barclay said he called Shelton on Wednesday, February 20, 1991, because he knew Shelton had four points and he wanted to know what was wrong with him since he needed him there to run the Morgan press. He said he asked Shelton why he did not call in and Shelton said, ''I should have called on Monday but my medication was not effective, I was still not well, and I was going to my doctor the next day. Barclay said he wrote in the logbook ''Steve Shelton won't be in, Wednesday, February 20, 1991.'' However, Shelton testified he called in February 20 and told Barclay he was still sick and would not be in and Barclay said O.K. Shelton denied Barclay or any other member of management called and spoke to him at home about points before February 26. The logbook does not show that Barclay called or spoke with Shelton February 26, 1991. I therefore credit Shelton's account that he called in February 20 not only because it coincides with the documentary and circumstantial evidence, but also because I was persuaded by his demeanor that he was testifying truthfully. Correspondingly, I was not persuaded by the demeanor of Barclay or the circumstances that he was testifying accurately or truthfully.

Barclay further testified that Shelton called him the next day, Thursday, February 21, and told him he had to get his medicine changed and hoped he will get well over the weekend; and that he will be out until Monday, February 25. He told Shelton ''okay, be sure to call and he would look to see him on Monday [February 25] doctor's orders,'' and he recorded the call in the logbook (R. Exh. 12).

In any event, Shelton did not call in or report to work Monday, February 25, as he previously indicated, so Barclay called him at home at 3:15 p.m. and asked him why was he

not there. According to Barclay, Shelton replied, ''Oh, I thought you said I didn't have to call you until I was coming back''; that he was sorry and he must have misunderstood. He asked Shelton should he assume he would be in tomorrow (Tuesday, February 26) and Shelton said ''No, don't assume, I will call you tomorrow.'' Shelton did not call or report to work on Tuesday, February 26.

Barclay denied he ever told Shelton in their telephone conversation February 21, that Shelton can call in the day he would return to work. Shelton first testified his medication was changed and he fell asleep and did not call in. Then he testified he was still sick and he called in February 21 and requested insurance forms.

Finally, Shelton testified he did not call in February 21 because he had visited his doctor that day and was given a prescription medication. When he returned home and took the medication he fell asleep. Around 4:30 p.m. he received a phone call from Supervisor Barclay who asked him why had he not called in. Shelton told him about the medication, his falling asleep, and that the doctor told him to stay home until at least February 25. If he was still sick on that date, the doctor told him he would extend his time off. Barclay told Shelton he was to call in everyday and Shelton said he reminded Barclay how he had been out sick for an extended time in 1988 and did not call in everyday. He told Barclay he believed you only had to call in once if you were out for an extended illness, and he asked Barclay what did he want him to do. After a pause, Barclay said, ''okay, on the morning of the day you are going to return to work, call me so I can schedule you back to work.'' Shelton told him he would do that. However, Barclay denies he ever gave Shelton such instructions.

Supervisor DiTusa testified the logbook shows Shelton called in February 21 and informed Manager Barclay that he was still out sick until February 25.

Shelton, nevertheless, followed his understanding of the conversation with Barclay on February 21 and did not call in on February 25 or 26 because he was still sick. However, he said Barclay called him at home about 4:30 p.m. February 26 and asked him why had he not called in or reported for work that day (February 26). Shelton told him he (Barclay) had told him not to call in until the day he was returning to work. Barclay denied he had told Shelton that, telling Shelton he misunderstood him. Barclay then told Shelton he had accumulated a lot of points under the attendance policy. Shelton told him he was feeling better and would probably report to work the next day (February 27), and Barclay told him to call in the next day and notify him.

McEwen acknowledged she never asked Shelton did he have a written excuse from his doctor nor did Shelton tell her he had one. She admitted he did tell her he had telephone bills indicating he did call in February 18, 1991, but he never offered to show them to her. She did not tell him on the telephone to bring them to his exit interview and thereafter, because she did not think about them thereafter. However, Shelton said he offered his doctor's excuses at his termination on February 27, 1991, but that Supervisor DiTusa said he did not need them. He acknowledged he did not offer his telephone bills at the exit interview but said he did tell them he had them with him. He denied he told them he was not there to dispute the points, because he did dispute the two points for February 18. Respondent said those two points would only reduce his undisputed points from nine to eight, which it contends is still over seven points.

Shelton called Barclay the next morning (February 27) at 10 o'clock and informed him he was coming to work that afternoon. Barclay said, ''okay, we'll see you then.''

Supervisor Barclay denied he had any conversations with Shelton on Tuesday, February 26, but stated he did mention points during his conversation with Shelton on Wednesday, February 20. He further stated he had discussed Shelton's points with Human Resources Manager McEwen and Manager Clyde Packer on Wednesday, February 27, and recommended Shelton's termination. He said President Joe Mead agreed Shelton had too many points.

When Shelton reported to work that afternoon (February 27), he presented his medical (doctor's) excuse to Barclay, who told him to present it to Supervisor DiTusa. When Shelton went to his press, DiTusa told him he needed to see him in the office. Shelton presented his medical excuse to DiTusa but DiTusa told him he did not need it. When they went into the office DiTusa told him he had a lot of points and Respondent's policy on absenteeism provided that an employee had to be terminated on their receipt of seven points and he (Shelton) had 10 points. DiTusa told Shelton he was sorry but Respondent had to let him go.

Manager Barclay testified he considered Shelton to be a good employee with no serious attendance problems.

Again the evidence in this case shows that another employee, Steve Shelton, has been in Respondent's employee even longer than Paul Laswell, in fact since January 1984. His longer employment tenure with Respondent was also uneventful in reference to problems prior to union activity. (Management) Supervisor Barclay considered him a good employee with no serious problems of attendance. Like Laswell, in mid-October 1990, Shelton became an open union advocate and supporter and Respondent was well aware of his position in this regard. In fact, in early January 1990, Shelton was interrogated about his union interest by his supervisor, Jim DiTusa, who also tried to have him remove union signs from his toolbox, without giving him any assurances against reprisals by Respondent for his union involvement. Shelton served as an observer for the Union during the union election.

The Union lost the election on January 25, 1991, and Shelton, like Laswell, told disappointed employees they would have another chance to vote for unionization a year later. Three weeks after the union election, Shelton was out sick Monday, February 18, 1991. He remained out sick until February 27, 1991, during which time a dispute arose between himself and management as to whether he complied with Respondent's call-in points policy, instructions given him by Supervisor Barclay regarding his compliance therewith, and Respondent's clear and proper enforcement of the attendance policy. Shelton lost the disputed argument when Respondent abruptly terminated his employment February 27, 1991, on the application of the policy and Respondent's determination that Shelton did not comply therewith.

Although Respondent's termination of Shelton may appear to have some technical credence that he failed to comply with Respondent's call-in policy, that appearance quickly vanishes when Respondent's application of the attendance policy is considered in the context of the total credited evidence and findings in this record. Thus, when the 7 years'

tenure of this acknowledged essentially problem-free employee (Shelton) is considered along with the advent of his and Laswell's union activity and the problems they encountered before and after the election, I am not persuaded that Shelton's noncompliance with the attendance policy can be attributed to coincidence. It is clear from the record that although Shelton has worked for Respondent since January 1984, he had no serious problems with anything before the onset of union activity in mid-October 1990. Notwithstanding, within the last 3 months of his employment, between December 1990 and February 27, 1991, when he was terminated, Respondent, without any explicit warning to him, determined on disputed facts, and an unclear interpretation and swift enforcement of an attendance policy, that he violated the call-in policy to an extent warranting his termination.

It is clear from the credited evidence that Shelton had been out sick before 1991 and did not call in everyday as Respondent now contends was required. Respondent's contention is not supported by any evidence that it clearly published or emphasized to employees that they were to call in everyday when they were out sick, even when the employees made it clear that they could not determine from the nature of their illness, when they would return to work. In the absence of such evidence, I am persuaded by the credited evidence that Respondent reinterpreted its policy or started enforcing it more strictly than in the past, without notifying all employees, specifically Shelton. In the context of the total evidence, such stricter enforcement was designed to get rid of Shelton.

Strangely, two employees (Shelton and Laswell) were subjected to such drastic actions by Respondent (shift transfer and termination under conflicting factual circumstances) within that 3-month period, just happened to be these two well-known union proponents. Although the election was over January 25, 1991, Respondent overheard the union representative tell Laswell he will be back next year. Respondent also had first-hand knowledge from Shelton that he was from a union home, that he believed in unionization and he was prounion. Respondent therefore had every reason to believe or know that Shelton and Laswell would be making a second effort to unionize Respondent in January 1992. Packer had already informed Laswell Respondent was going to get rid of employees with the bad attitude (union supporters), and it had informed supervisors Laswell would not be in its employee for another election. It would have to follow that Shelton had a bad attitude also, since he was a union supporter.

Under the above circumstances, it would not make sense for Respondent to tell supervisors Laswell would not be there for another election, if Respondent did not also have the same attitude towards, and the same intentions for Shelton. Indeed the fact that it terminated Shelton 3 weeks after the election clearly demonstrates that he too was included in the same get-rid-of plan Respondent had designed for Laswell and other bad attitude (union supporter) employees. Moreover, it is clear that Respondent's contended reason for Shelton's discharge (noncompliance with its absentee policy) is a pretext to conceal its real reason, Shelton's, protected concerted activity. *Phillips Industries*, supra; *Chinatown Planning Council*, 290 NLRB 1091 (1988).

I also conclude and find on the foregoing credited evidence and reasons that Respondent has failed to demonstrate by a fair preponderance of the evidence that its discharge of Steve Shelton would have taken place even in the absence of his protected concerted conduct. Consequently, I find that Respondent's discharge of him was motivated by his protected concerted conduct in violation of Section 8(a)(3) of the Act. *Wright Line*, supra.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices warranting a remedial order, I shall recommend that it cease and desist from engaging in such conduct, and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has coerced and restrained its employees by engaging in numerous threatening, interrogating, and intimidating conduct in violation of Section 8(a)(1) of the Act; that it has discriminatorily transferred an employee to another work shift, discriminatorily issued a warning to him, and issued a second discriminatorily warning to him forbidding him to talk to a fellow employee without a work order during work hours; discriminatorily discharged another employee, and failed and refused to reinstate him to his position in its employ, all because both employees engaged in protected union activity, in violation of Section 8(a)(3) of the Act, the recommended Order will provide that Respondent cease and desist from engaging in such unlawful conduct.

Because of the character of the unfair labor practices here in found the recommended Order will provide that Respondent cease and desist from or in any like or related manner interfering with, restraining or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. *NLRB v. Entwistle Mfg. Co*., 120 F.2d 532, 536 (4th Cir. 1941), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987), except as specifically modified by the wording by such recommended Order.

CONCLUSIONS OF LAW

1. By promising an employee benefits if he would withdraw his support for the Union and support the Respondent's position, Respondent violated Section 8(a)(1) of the Act.

2. By promising employees it would or could give employees more than the Union could give them, Respondent violated Section 8(a)(1) of the Act.

3. By soliciting employees assistance to change vote-yes to vote-no votes, Respondent violated Section 8(a)(1) of the Act.

4. By promising to allow an employee to act like a steward for employees in presenting grievances to management if he would withdraw his support for the Union, Respondent violated Section 8(a)(1) of the Act.

5. By telling an employee he passed up a ''hell of an opportunity for benefits'' because he declined to withdraw his support for the Union, Respondent violated Section 8(a)(1) of the Act.

6. By telling an employee management wanted him out of the Company's employ before another union election could be held, Respondent threatened such employee with discharge, in violation of Section 8(a)(1) of the Act.

7. By restricting the in-plant movements of an employee and closely observing and monitoring his performance, Respondent created the impression among employees that their

protected concerted union activities were under surveillance by Respondent, in violation of Section 8(a)(1) of the Act.

8. By telling a well-known union supporter employee he had a bad attitude and Respondent was going to get rid of employees who did not change their bad attitude, Respondent threatened to discharge the employee in violation of Section 8(a)(1) of the Act.

9. By interrogating a well-known union supporter employee as to whether he was talking to another employee about the Union, Respondent created the impression among employees that their protected concerted and union activities were under surveillance by Respondent, in violation of Section 8(a)(1) of the Act.

10. By discriminatorily transferring employee Paul Laswell from second to first work shift, Respondent violated Section 8(a)(3) of the Act.

11. By discriminatorily issuing a warning to Paul Laswell for parking near the plant, Respondent violated Section 8(a)(3) of the Act.

12. By discriminatorily issuing a written warning only to union proponent Paul Laswell, forbidding him from talking to a fellow employee without a work order during work hours, Respondent violated Section 8(a)(3) of the Act.

13. By discriminatorily discharging union proponent employee Steve Shelton, Respondent violated Section 8(a)(3) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Forms Corporation of America, Spring Grove, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promising employees benefits if they would withdraw their support for the Union and support Respondent's position.

(b) Promising employees Respondent could or would give employees more than the Union could give them.

(c) Soliciting employees' assistance to change yes-votes to no-votes.

(d) Promising to allow an employee to act like a steward for employees in presenting their grievances to management, if they abandoned their support for the Union.

(e) Telling an employees he passed up ''a hell of an opportunity for benefits'' when he declined to withdraw his support for the Union.

(f) Telling an employee Respondent wanted him out of its employ before another union election could be held.

(g) Restricting the in-plant movements of and more closely observing and monitoring the work performance of a well known union supporter employee.

(h) Telling a well-known union supporter employee he had a bad attitude and it was going to get rid of employees who did not change their bad attitude (union supporter).

(i) Questioning a well-known union supporter as to whether he was talking to another employee about the Union.

(j) Discriminatorily transferring an employee from one work shift to another because he supported the Union.

(k) Discriminatorily issuing a written warning only to a well-known union supporter employee for parking near the plant.

(l) Discriminatorily issuing a written warning to only a union supporter for talking to a fellow employee during work hours.

(m) Discriminatorily discharging a union proponent employee because he advocated and supported the Union.

(n) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remove from all company records of former employee Paul Laswell any reference to the unlawful warnings for parking and talking to a fellow employee issued to him, and notify him in writing that this has been done by the Respondent and that the unlawful warning will not be used against him in any way.

(b) Recall and offer to Steve Shelton immediate and full reinstatement to his former job or, if such job no longer exists to a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed, and make him whole, with interest, for any loss of earnings or benefits he made have suffered as a result of his discharge.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of pay due under the terms of this Order.

(d) Post at Forms Corporation of America, Spring Grove, Illinois, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT promise employees benefits if they would withdraw their support for the Union and support our position opposing unionization.

WE WILL NOT promise employees we could or would give them more than the Union could give them.

WE WILL NOT solicit employees' assistance to change employees' yes votes to no votes.

WE WILL NOT promise to allow an employee to act or serve like a steward for employees in presenting their grievances to management if they would abandon their support for the Union.

WE WILL NOT tell an employee he passed up ''a hell of an opportunity for benefits'' because he declined to withdraw his support for the Union.

WE WILL NOT tell unsuccessful employees supporting the Union we want them out of our employ before another union election can be held.

WE WILL NOT restrict the movements of employees in the plant and more closely observe and monitor them as they perform their work.

WE WILL NOT tell our employees they have a bad attitude because they support the Union and we are going to get rid of employees who do not change their bad attitude.

WE WILL NOT interrogate employees supporting the Union about whether they are talking to fellow employees about the Union.

WE WILL NOT discriminate against our employees by transferring them to another work shift because they support the Union.

WE WILL NOT discriminate against our employees by issuing a disciplinary warning to them for parking near the plant because they support the Union.

WE WILL NOT discriminate against our employees who support the Union by issuing them a written warning forbidding them to talk to a fellow employee during working hours.

WE WILL NOT discriminate against the hire, tenure or terms or conditions of employment of our employees, by terminating their employment because they supported the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recall or offer to recall Steve Shelton to the position he last held, or if such position no longer exists, to a substantially equivalent position for which he qualifies without prejudice to his seniority or other rights and privileges, and we will make him whole for any loss of pay he suffered as a result of discrimination against him, with interest.

WE WILL remove from all company records, any reference to the unlawful warnings issued to Paul Laswell, and notify him in writing that this has been done by us, and that the unlawful warnings will not be used against him in any way.

All our employees are free to become or remain, or refuse to become or remain, members of Local 415-S Graphic Communications International Union, AFL–CIO or any other labor organization.

FORMS CORPORATION OF AMERICA